

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
325 AKIRA CORPORATION	:	DETERMINATION
D/B/A CLUB AI AKIRA ARIMURA	:	DTA NO. 815784
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Period March 1, 1993 through November 30, 1994.	:	

Petitioner, 325 Akira Corporation d/b/a Club Ai Akira Arimura, 325 East 48th Street, New York, New York 10017, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1993 through November 30, 1994.

On December 3, 1997 and December 5, 1997, respectively, petitioner, by its president, Akira Arimura, and the Division of Taxation, by Steven U. Teitelbaum, Esq. (Marvis A. Warren, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by May 26, 1998, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Thomas C. Sacca, Administrative Law Judge, renders the following determination.

ISSUE

Whether penalties and interest were properly imposed against petitioner based on the late filing of its sales and use tax returns and the late payment of the tax due.

FINDINGS OF FACT

1. On February 23, 1996, petitioner, 325 Akira Corporation d/b/a Club Ai Akira Arimura, filed late sales and use tax returns for the quarters ended May 31, 1993, August 31, 1993, November 30, 1993, February 28, 1994, May 31, 1994, August 31, 1994 and November 30, 1994 without remittance of the tax due.

2. The Division of Taxation ("Division") introduced into the record of this matter the

affidavit of Mr. Edward Ryan, Chief Clerk of the Sales Tax Post-Processing Section of the Division. Mr. Ryan supervises the informal protest unit of the Sales Tax Post-Processing Section. His affidavit is based upon his review of the official records of the Division maintained in the ordinary course of business and required to be maintained in the ordinary course of business, including information maintained on the Division's mainframe computer system which is referred to as "CARTS" (case and resource tracking system), and based upon his personal knowledge acquired during his tenure with the Division. Mr. Ryan initially states that at the time when notices and demands were issued to petitioner, the Division did not retain copies of this type of notice and demand.

According to Mr. Ryan, when a tax return is received by the Division, the date of receipt is date stamped on the face of the return and that date becomes the date of filing of the return. When the designated financial institution (hereinafter the "bank") receives the return from the Division, the date of receipt by the bank is date stamped on the last page of the return. The bank affixes a deposit serial number on the return. Deposit serial numbers in the "500,000" range indicate that the bank received a return without remittance. The Division's data processing system computes penalty and interest, and passes that information, along with the deposit serial number, to CARTS to generate a bill for the tax, penalty and interest due.

3. Mr. Ryan's review of the Division's records with respect to sales tax assessments against petitioner by notice and demand revealed the following notice numbers:

L-011833576-9
L-011833570-6
L-011833572-4
L-011833575-1
L-011833577-8
L-011833571-5
L-011833573-3

Attached to the affidavit as Exhibit "A" are copies of the CARTS-Assessments Receivable, Assessment Summary screen, for each of the assessments indicated above. This is a screen with a summary of the current status in the assessment process. The summary indicates the tax

identification number and the name of the taxpayer, the type of tax, the reason why the assessment originated and the date on which a notice and demand was issued. The summaries associated with the above notice numbers indicate that the assessments originated because sales and use tax returns were filed late without remittance and that notices and demands were issued on April 8, 1996.

4. Mr. Ryan further explained that when a notice and demand is issued by CARTS, a case contact is generated which indicates the following information: case number, date of contact and description of contact. This data may not be altered once it is entered in CARTS. All assessments for all taxes are identified with an assessment ID which begins with the letter "L" followed by nine digits, a space and a final "check digit" which is used by the computer system to verify the accuracy of the data. All collection cases are identified by a "CASE" number which begins with the letter "E" followed by nine digits. Collection for all assessments for a taxpayer are tracked under one "CASE" number, with each separate assessment identified by its assessment ID number. The case summary of the case contact for each assessment indicates that a notice and demand was issued on April 8, 1996. Attached to the affidavit as Exhibit "B" are copies of the CARTS-Taxpayer & Employee Notification, Case Contact-Case Summary screen, for each of these assessments.

5. In his affidavit, Mr. Ryan states that by typing an "x" next to a particular case contact, details of that case contact are revealed in screens identified as Detail I and Detail II. Information on the case contact for each assessment included in Detail I indicates: the assessment and tax identification numbers, the name of the taxpayer, the address where the notice was sent, the type of contact (mail) and a description of the contact (notice and demand). Information on the case contact for each assessment included in Detail II indicates: the assessment and tax identification numbers, the name of the taxpayer, description of the contact (notice and demand), the penalty per bill, the interest per bill, the total amount of the bill, the tax amount per the notice and any payments or credits per the notice. Copies of the CARTS-Taxpayer & Employee Notification,

Case Contact Inquiry-Detail I screen and Detail II screen are attached to the affidavit as Exhibits “C” and “D”, respectively.

6. Mr. Ryan further explained that CARTS includes a database which records the date on which a sales and use tax return is due, the date on which a sales and use tax return is filed, the amount of tax due, the amount of penalty accrual, the amount of interest accrual, any payments or credits accompanying the return and any payments, refunds or abatelements of amounts due. Such a database can be accessed by an assessments receivable inquiry. Copies of the CARTS- Assessments Receivable, Return Segment Balances screen for each of the assessments are attached to the affidavit as Exhibit “E”.

By reviewing the individual CARTS computer screens in Exhibits “A”, “B”, “C”, “D” and “E” together, Mr. Ryan indicated that the following assessment information was issued to petitioner on April 8, 1996 by notice and demand:

Assessment ID	Tax Period	Tax Amount	Interest Amt	Penalty Amt
L-011833576-9	05/31/93	\$1,897.73	\$718.70	\$569.17
L-011833570-6	08/31/93	\$2,034.13	\$727.36	\$610.21
L-011833572-4	11/30/93	\$1,663.87	\$528.40	\$498.98
L-011833575-1	02/28/94	\$1,641.01	\$458.11	\$492.30
L-011833577-8	05/31/94	\$1,851.43	\$446.30	\$555.34
L-011833571-5	08/31/94	\$1,819.75	\$371.39	\$509.39
L-011833573-3	11/30/94	\$1,956.53	\$329.88	\$489.05

The screens also indicated that for the tax period ended May 31, 1993, petitioner was credited with a payment or credit in the amount of \$2,693.84. Finally, Mr. Ryan reviewed the sales and use tax returns filed for the period March 1, 1993 through November 30, 1994, which indicated that the tax amount due per return filed is the same as the tax amount due per assessment on CARTS. A copy of each of the quarterly sales and use tax returns for the period March 1, 1993 through November 30, 1994 are attached to the affidavit as Exhibit “F”.

7. Petitioner presented no documentation or other evidence in support of its position that the penalties should be waived.

CONCLUSIONS OF LAW

A. Initially it is noted that the notices and demands issued in this matter for the tax, penalty and interest due were the appropriate documents to be used in a late-filed, no-remit sales and use tax return situation and are therefore properly subject to review by the Division of Tax Appeals (***Matter of MGK Constructors***, Tax Appeals Tribunal, March 5, 1992).

B. The next question to be addressed is whether petitioner's late payment of sales tax was due to reasonable cause and the absence of willful neglect.

Tax Law § 1145(a)(1)(i) authorizes the imposition of a penalty plus interest at the rate specified therein for failure to file a return or to pay or pay over any tax in a timely manner. However, these charges are to be canceled if "reasonable cause" is affirmatively shown by the taxpayer (Tax Law § 1145[a][1][ii]). The regulation in 20 NYCRR 536.5(c)(5) provides, in relevant part, that reasonable cause, where clearly established, may include the following:

Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. Ignorance of the law, however, will not be considered as a basis for reasonable cause.

Unfortunately, petitioner has failed to introduce any evidence into the record of this matter to explain why the sales and use tax returns were filed late without remittance of the tax due for the periods at issue.

C. The Tax Appeals Tribunal held in ***Matter of Atlantic & Hudson Ltd. Partnership*** (January 30, 1992) that:

[a]lthough a determination of tax must have a rational basis in order to be sustained upon review (*see, Matter of Grecian Sq. v. New York State Tax Commn.*, 119 AD2d 948, 501 NYS2d 219), the presumption of correctness raised by the issuance of the assessment, in itself, provides the rational basis, so long as no evidence is introduced challenging the assessment (*see, Matter of Tivolacci v. State Tax Commn.*, 77 AD2d 759, 431 NYS2d 174; ***Matter of Leogrande***, Tax Appeals Tribunal, July 18, 1991, ***confirmed, Matter of Leogrande v. Tax Appeals Tribunal***, 187 AD2d 768, 589 NYS2d 383, ***lv denied***, 81 NY2d 704, 595 NYS2d 398).

Where, as here, petitioner has failed to introduce any evidence to rebut the presumption of correctness, the issuance of the assessment provides the rational basis for the assessment. To hold otherwise would be in irreconcilable conflict with the principles that the Division does not have the burden to demonstrate the propriety of its assessment (*see, Matter of A & J Gifts Shop v. Chu*, 145 AD2d 877, 536 NYS2d 209, *lv denied*, 74 NY2d 603, 542 NYS2d 518; *Matter of Blodnick v. New York State Tax Commn.*, 124 AD2d 437, 507 NYS2d 536, *appeal dismissed* 69 NY2d 822, 513 NYS2d 1027; *Matter of Scarpulla v. State Tax Commn.*, 120 AD2d 842, 502 NYS2d 113) and that the petitioner has a heavy burden to prove the assessment erroneous (*see, Matter of Executive Land Corp. V. Chu*, 150 AD2d 7, 545 NYS2d 354, *appeal dismissed* 75 NY2d 946, 555 NYS2d 692).

In that petitioner did not submit any evidence in support of its petition, petitioner has “surrendered to the statutory presumption of correctness” and the subject assessments must be sustained (*see, Matter of Tavalacci v. State Tax Commn., supra*). In any event, petitioner’s returns were filed late without remittance of the tax due, and the penalty and interest of Tax Law § 1145 (a)(1)(i) and (ii) were required to be imposed by the Division (*see*, 20 NYCRR 536.5[a]).

D. The petition of 325 Akira Corporation d/b/a Club Ai Akira Arimura is denied and the notices and demands dated April 8, 1996 are sustained.

DATED: Troy, New York
October 8, 1998

/s/ Thomas C. Sacca
ADMINISTRATIVE LAW JUDGE